

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-725

September 25, 1998

PUBLIC UTILITIES COMMISSION
Rulemaking: Selection of Primary
Interexchange and Local Exchange
Carriers (Chapter 296)

NOTICE OF RULEMAKING

WELCH, Chairman; and NUGENT, Commissioner

I. INTRODUCTION

In this Notice, we open a rulemaking to prohibit telecommunications carriers from changing a customer's presubscribed interexchange carrier ("PIC") or presubscribed local exchange carrier ("PLEC") without first receiving the customer's authorization. This practice is commonly referred to as "slamming." The rule also requires new telecommunications carriers to whom service is being switched to verify the customer's authorization to change carriers, prescribes methods for such authorization, and prescribes penalties for carriers that violate the rule.

II. GENERAL CONSIDERATIONS

Title 35-A, §7106, requires the Commission to adopt nondiscriminatory and competitively neutral rules to address the problem of slamming. In developing this proposed rule, we were guided by the specific statutory provisions contained in 35-A M.R.S.A. § 7106. The primary objectives of this rule are:

- 1) to ensure that a customer's PIC or PLEC is not changed without the customer's authorization;
 - 2) to minimize inconvenience to customers whose PIC or PLEC is changed without their authorization;
 - 3) to ensure that customers do not pay or incur any additional costs as a result of being slammed (than they would have incurred had they remained with their authorized carrier);
 - 4) to ensure that the carriers do not benefit from an unauthorized switch of a customer's PIC or PLEC through increased revenues; and
 - 5) to place the burden of returning the customer to the authorized carrier and determining correct billing amounts on the carriers.
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Title 35-A M.R.S.A. § 7106(3)(A) requires that any rules adopted by the Commission be consistent with the rules adopted by the Federal Communications Commission. The FCC currently is promulgating a rule to address slamming; however, it is not known when the rule will be finalized. We believe Maine customers need the protections contained in Title 35-A as soon as possible. Therefore, we will proceed with our rulemaking. We have included language in the rule to incorporate any FCC rule that is promulgated subsequent to this rule.

Pursuant to 35-A M.R.S.A. § 7106(3), the rules established in this proceeding are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

III. DISCUSSION OF INDIVIDUAL SECTIONS

A. Section 1: Definitions

Section 1 contains definitions of terms used throughout the rule. The definitions contained in this section are generally self-explanatory.

The definition that requires some explanation is the definition of "Initiation of a PIC or PLEC Change." Title 35 M.R.S.A. § 7106(3)(C) requires the Commission to define actions that constitute the initiation of a change of carrier and actions that do not constitute the initiation of a change of carrier to clarify where the burden of documenting the customer's desire for a PIC or PLEC change resides (i.e. with the customer's presubscribed local exchange carrier that effectuates the PIC or PLEC change, or, with the new telecommunications carrier who requests the PIC or PLEC change). Our draft rule clearly puts the burden of verifying the PIC or PLEC change on the telecommunications carrier to whom service is being switched.

The draft rule defines "the initiation of a PIC or PLEC change" as the actual request for such a change that is submitted by a new telecommunications carrier or a customer to a local exchange carrier. Thus, if a new telecommunications carrier submits a request to change a customer's intrastate toll provider to a local exchange carrier that has not been properly verified, it will be the new telecommunications carrier, not the LEC, that is in violation of this rule. The draft rule does not define actions that "do not constitute the initiation of a PIC or PLEC change" because such a definition would be more confusing than helpful.

B. Section 2: Freeze of Customers PIC and PLEC

Section 2 requires a local exchange carrier to offer PIC and PLEC freezes to its customers and verify customer requests to lift such freezes. We believe that it is in the customer's best interest to be able to freeze its PIC or PLEC selection to ensure that the selection is not changed unless the customer so desires. Likewise, it is also important for the customer to be able to easily remove the PIC or PLEC freeze to take advantage of competitive local exchange and intrastate toll markets. Because the presubscribed local exchange carrier controls the PIC or PLEC freeze, responsibility for documenting a customer's desire to lift a PIC or PLEC freeze resides with the presubscribed local exchange carrier.

C. Section 3: Changing a Primary Interexchange or Local Exchange Carrier

Section 3(A) prohibits new telecommunications carriers from initiating a change in a customer's PIC or PLEC without obtaining proper authorization for the change from the customer.

Section 3(B) prohibits a new telecommunications carrier from submitting a PIC or PLEC change request to a LEC unless the request is verified through a Letter of Agency (LOA), an electronic authorization placed from the telephone number(s) on which the PIC or PLEC is to be changed, an independent third party, or other FCC approved method. The verification methods established in this subsection mirror the verification methods contained in 35-A M.R.S.A. § 7106(1)(A).

Section 3(C) requires new telecommunications carriers to whom service is being switched to document a customer's PIC or PLEC change request made over the telephone pursuant to one of the methods required for carrier-initiated PIC or PLEC changes. Title 35-A M.R.S.A. § 7106(3)(B) requires the Commission to consider whether customer verification is necessary in the case of customer-initiated calls. This draft rule reflects our belief that customer verification is necessary to prevent slamming in those instances where a carrier initiates an unauthorized change and simply claims that the customer requested the switch over the phone.

We seek comment on whether LECs should be required to document a customer's request for a PIC or PLEC change in cases where the customer contacts the LEC (as opposed to the new telecommunications carrier) to request the change.

D. Section 4: Remedies for Unauthorized Changes

The purpose of this section is to ensure that customers do not pay or incur any additional costs as a result of being slammed, and that carriers involved do not benefit financially from a slamming incident.

Title 35-A M.R.S.A. § 7106(3)(D) states that if the FCC rules that customers are not responsible to any carrier (authorized or unauthorized) for usage during the period the customer was served by the unauthorized interstate carrier, the Commission may promulgate a similar rule for local and intrastate carriers. Until such time, the Commission is not authorized to release customers from liability to the authorized carrier for the customer's usage during the period the customer was with the unauthorized carrier. This rule does, however, attempt to minimize the inconvenience suffered by customers who have been "slammed" by placing the burden of switching the customer back to the authorized carrier and determining correct billing amounts on the telecommunications carriers.

Section 4(A) requires a carrier that initiates an unauthorized PIC or PLEC change to pay all usual and customary charges associated with changing the customer's PIC and/or PLEC, all usual and customary charges associated with returning the customer to the authorized carrier, and any access charges to access providers or underlying carriers.

Section 4(B) states that a carrier that initiates an unauthorized PIC or PLEC change will receive no payment for services provided and requires that the unauthorized carrier promptly refund any amounts collected as a result of the unauthorized change to the customer.

Section 4(C) requires a carrier that initiates an unauthorized PIC or PLEC change to provide all billing records to the authorized carrier within 15 days of a request for such information by the authorized carrier. The purpose of this subsection is to ensure that billing records are provided to an authorized carrier in a timely manner so that the authorized carrier may in turn promptly bill the customer for services incurred while the customer was with the unauthorized carrier.

Section 4(D) requires an authorized carrier to issue an itemized bill to a customer who has been slammed for services incurred while the customer was with an unauthorized carrier within 30 days of its receipt of the billing information from the unauthorized carrier. If a bill is not issued within this timeframe, the customer is not obligated to pay the authorized carrier for services provided by an unauthorized carrier. The purpose of this subsection is to ensure that slamming problems

are resolved in a timely manner and that customers are not billed for services received months earlier.

Section 4(D)(3) requires an authorized carrier to deduct any money that a customer paid to an unauthorized carrier and that was not refunded to the customer by the unauthorized carrier from the amount due to the authorized carrier. Section 4(D)(3) also requires an authorized carrier to credit a customer's account for payments the customer made to an unauthorized carrier that were not refunded to the customer and that exceeded the total amount owed to the authorized carrier.

The purpose of these two subsections is to ensure that customers do not pay more for services because of the unauthorized change of carriers than they would have been charged had the unauthorized change not occurred. Customers who are slammed often are charged at a higher rate by an unauthorized carrier for services than they would have been charged by their authorized carrier. It is therefore possible for a customer to pay more to an unauthorized carrier for services than they would have paid to their authorized carrier. We feel it is important to hold a customer responsible for only the cost of services they would have been responsible for had the unauthorized change not occurred.

E. Section 5: Consistency with Federal Communications Commission Rule

Section 5 states that in the event the FCC promulgates a rule that is inconsistent with certain provisions of this rule, the FCC rule will govern for those provisions. As stated earlier in this document, the FCC is currently in the process of promulgating a rule to address slamming. Title 35-A M.R.S.A. § 7106(3)(A) requires that rules adopted by the Commission be consistent with rules adopted by the FCC, except that the Commission's rules on customer verification need not include the customer information package as defined in 47 Code of Federal Regulations, Section 64.1100(d). Section 4 ensures that this rule will be consistent with any slamming rule promulgated by the FCC.

F. Section 6: Penalty

Section 5 provides that the Commission may impose an administrative penalty against any person, corporation, or entity who violates this rule and establishes maximum penalty amounts and guidelines for determining penalty amounts. This section mirrors the language contained in 35-A M.R.S.A. § 7106(2).

V. FISCAL AND ECONOMIC EFFECTS

In accordance with 5 M.R.S.A. §8057-A(1), the fiscal impact of the proposed rule is expected to be minimal. The Commission invites all interested parties to comment on the fiscal impact and all other implications of this rule.

VI. RULEMAKING PROCEDURES

This rulemaking will be conducted according to the procedures set forth in 5 M.R.S.A. §§ 8051-8058. A public hearing on this matter is presently scheduled on October 30, 1998, from 9:00 a.m. to 12:00 p.m. in the hearing room at the Maine Public Utilities Commission. The Maine Public Utilities Commission is located at 242 State Street in Augusta.

Written comments to the rule may be filed with the Administrative Director no later than November 13, 1998. Please refer to docket number 98-725 when submitting comments.

The Administrative Director shall send copies of this Order and the attached rule to:

1. All telecommunications carriers certified to operate in the State of Maine;
2. All persons who have filed with the Commission within the past year a written request for copies of all Notices of Rulemaking;
3. The Office of the Public Advocate;
4. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and
5. Executive Director of the Legislative Council, State House Station 115, Augusta, Maine 04333 (20 copies).

Accordingly, we

O R D E R

1. That the Administrative Director send copies of this Order and the attached rule to all the persons listed above and compile a service list of all such persons and any persons submitting written comments on the proposed rule.
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2. That the Public Information Coordinator shall post a copy of this Order on the Commission's World Wide Web page (<http://www.state.me.us/mpuc/>).

Dated at Augusta, Maine this 25th day of September, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent

Attachment
